SERVED: August 24, 1992

NTSB Order No. EA-3644

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 11th day of August, 1992

THOMAS C. RICHARDS, Administrator, Federal Aviation Administration, Complainant, v. ELLEN S. RAVIS, Respondent.	Docket SE-10313

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge Jimmy N. Coffman, issued on May 10, 1990, following an evidentiary hearing.[1] We deny the appeal.[2]

[1]The initial decision, an excerpt from the hearing transcript, is attached.

[2]In answer to respondent's request that her appeal be scheduled to avoid expense and time off from work, we note that, on appeal to the Board, a different procedure typically applies (i.e., there is typically no hearing at this stage). We also note that, in the absence of a request for specific relief, we

Respondent was the chief flight instructor ("CFI") for Mid County Flyers, a Part 141 flight school of which she was also the owner and president. Tr. at 16. In his initial decision, the law judge affirmed the Administrator's order (complaint) suspending respondent's CFI certificate for 7 days.[3] The law judge found that, as alleged, respondent had violated 14 C.F.R. 141.79(c) of the Federal Aviation Regulations ("FAR"). This rule requires that, every 12 months, chief flight instructors complete a flight instructor refresher course consisting of not less than 24 hours of ground or flight instruction, or both.

The record before the law judge included testimony from an FAA inspector, who had reviewed respondent's records and discovered the absence of these refresher courses. She had also admitted this to him (Tr. at 13), and her answer to the Administrator's order acknowledged that she had not had a refresher course in the past 12 months. Respondent, however, also stated her belief that she was no longer required to take the courses.[4]

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have treated the appeal as a request for reopening and a new hearing.

[3]At the hearing, the Administrator sought to amend the order to reduce the suspension period from 30 to 7 days. The law judge granted that request. The Administrator also was allowed to amend the complaint to describe more accurately respondent's employment.

[4]The answer states: "I had been told since my previous inspections from 1985 that I did not need to take a Firc [flight instructor refresher course]." At the hearing, however, the FAA inspector who allegedly gave her this information denied doing

Respondent did not attend the hearing. The day before, she telephoned the law judge seeking a continuance.[5] Respondent had moved from New York (the hearing site, agreed to by her earlier in the proceedings) to Roanoke, VA. Because she had not told the FAA of her address change, information she had requested that was sent to her by FAA counsel was delivered to the New York address on May 4, and was not yet in her hands. She apparently claimed she needed the information to prepare, and that personal matters precluded her from appearing. Tr. at 4-6. The law judge denied the request, and proceeded to hold the hearing without her.

Respondent's reasons for being absent from the hearing and her delayed receipt of the information requested from the Administrator form the basis of her appeal. Respondent is appearing pro se and certain allowances may therefore be made. However, no degree of leniency warrants reopening the record and conducting another hearing.

Respondent was advised in November 1989 of the May 10, 1990 hearing date in New York City. Yet, she took no action to seek a postponement until immediately before the hearing. The explanation in her appeal that she could not afford to attend the hearing and could not afford to have her son miss any additional school is simply not good cause for a postponement. This explanation would, if accepted, justify an indefinite

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so. Tr. at 24 and Exhibit A-4.

[5]It may be that it was 2 days before. Tr. at 4-5.

postponement, clearly an unacceptable result.[6]

As noted earlier, respondent also claims, apparently also to justify her failure to appear, that she did not timely receive material she requested from the FAA. She offered no indication to the law judge of that material's relevance, nor does she do so here. Absent proof that the material would have affected the result, it offered no basis to the law judge to continue the case or to us to reopen it. Critically, respondent's admission that she had not had the required refresher course is, in itself, sufficient to find that the rule had been violated. That she may have acted inadvertently, due to a lack of knowledge or misunderstanding of the rules, affects, at most, the sanction imposed. Here, the Administrator on his own motion has reduced the sanction to 7 days, and we cannot say that this is an inappropriately long period.[7]

[6]We also cannot understand respondent's suggestion that, if FAA counsel had responded sooner, she would have notified this Board sooner. We fail to see how this relates to her other reasons for being unable to appear.

[7]Although we need not reach the issue, we note that, even were we to assume that respondent was told by the FAA inspector that she did not need refresher courses (a finding far from compelling on this record), we are not convinced that the violation would be excused. This is not an ambiguous rule, and it is questionable that, therefore, reliance on the inspector's information would be considered reasonable. Respondent is charged with knowledge of the FARs. Compare Administrator v. Miller, NTSB Order EA-3581 (1992) (where rule has never been interpreted in a particular manner and respondent could not reasonably be expected to envision this interpretation, complaint should be dismissed).

Finally, respondent questions the Administrator's complaint in this proceeding in light of a letter of correction issued to Mid County Flyers. Yet, it appears that the FAA has in the past accurately explained to her that the actions against the school and against the airman are separate, and both are permissible. Accord Administrator v. Mikesell, 5 NTSB 1853 (1987).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. The 7-day suspension of respondent's chief light instructor certificate shall begin 30 days from the date of service of this order.[8]

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

[8]For the purposes of this order, respondent must physically surrender her certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).